in his decision. When the Collector issued a fresh Approved Application No. 1/64 to the deceased, it was therefore done on the basis that if the court rules that the rightful owner of the land is the plaintiff then the deceased's Approved Application would be cancelled and the land re-assigned to the plaintiff. This is made clear by the Collector both to the plaintiff and the solicitor of the deceased. (See paragraph 2 of Exhibit A17 and paragraph 3 of Exhibit A18). Strictly, it is not true that he made a final decision against the plaintiff. Since the Collector's order is conditional in nature, the fact that the plaintiff had not appealed against the said decision under section 237 of the Land Code is not fatal to his cause of action in this case. The cases of *Subramaniam* v. *Muthiah Chetty*,[2] *Sundram* v. *Chew Choon Khoon*[3] and *Wong See Teng* v. *Saraswathy Ammal*[4] are distinguishable on the facts. The transaction by which the deceased had become the registered owner of the land in the present case is not a sale transaction. Under the circumstances, the defendant's contention that this court has no jurisdiction to hear this suit and to grant the declaration sought cannot be sustained.

As it is my finding that the agreement of November 14, 1961 is illegal being in contravention of the provisions of the Moneylenders Ordinance, and also that the deceased had exercised fraud, whatever rights the deceased had obtained from the said agreement would be void and of no effect. Nor could the deceased sustain his rights by virtue of Exhibit D3 or the power of attorney executed on November 13, 1961 in view of the clear intention of the plaintiff that the land should not be transferred to the deceased as conveyed to the deceased himself in Exhibit D2 and supported by Exhibit A8. Thus, apart from illegality, fraud and misrepresentation, the assignment of the land to the deceased was obtained by insufficient or void instrument, and it is by virtue of these facts that the land is now registered in the name of the deceased. I therefore hold that the plaintiff is at all material times the rightful owner of the land in dispute both in law and in equity although I have taken into account the fact that at the time when permission for assignment was forwarded to Exco, the deceased was apparently in possession of the land. (See Exhibit D6). Accordingly, I enter judgment for the plaintiff in the following terms: —

(i) A declaration that the plaintiff has been at all material times the recorded occupant of the land formerly known as Approved Application No. 780/50, and is the registered owner and proprietor of the said land now known as E.M.R. 5109, Lot Nos. 5422 and 10763, Mukim of Tanjong Karang, in the locality of Sungei Burong, Kuala Selangor.

(ii) An order that the Power of Attorney No. 1042/61 purported to be drawn by the plaintiff in favour of the deceased (Fatah Singh) is null and void and of no effect.

(iii) A further order that the Assignment or Memorandum of Transfer or other Application drawn and/or executed by the deceased (Fatah Singh) pursuant to the aforesaid Power of Attorney in respect of the said property be set aside.

(iv) A consequential order that the appropriate authority do cancel the fresh Approved Application No. 1/1964 in favour of the deceased, and expunge the name of the deceased (Fatah Singh) from the records of the relevant Land Office.

(v) Costs.

*Order accordingly.*

Solicitors: *Dato Clough Thuraisingham, Raj & Co.; Xavier & Vadiveloo.*

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## BALDEV SINGH v. MAHIMA SINGH & ORS.

**[O.C.J. (Hashim Yeop A. Sani J.) May 24, 1974]**
**[Kuala Lumpur — Civil Suit No. 449 of 1973]**

*Companies — Private company — Issue of shares — Articles of association — Resolution of general meeting — Binding on directors — Decision of directors to issue shares — Decision not in accordance with resolution of general meeting — Ultra vires.*

In this case the Seremban Town Service Sdn. Bhd. had resolved at its annual general meeting to incorporate Malay participation in the company and to have such Malay participation up to 30% of the issued and paid up capital of the company from shareholders approved by the Negri Sembilan Transport Operators' Association. The directors of the company subsequently decided to issue shares to Malay employees of the company but these persons were not approved by the Negri Sembilan Transport Operators' Association.

**Held:** (1) the decision of the directors was against the resolution of the Annual General Meeting as the persons to whom it was proposed to allot shares were not persons approved by the Negri Sembilan Transport Operators' Association and therefore it was in contravention of the Articles of association and *ultra vires*;

(2) an injunction should be issued to restrain the directors from holding any directors' meeting to approve the issue of shares to persons other than to persons described in the resolution of the annual general meeting.

*Cases referred to:-*

(1) *Rattan Singh & Ors.* v. *Managing Director of Moga Transport Company* A.I.R. 1959 Punjab 196.

(2) *Automatic Self-Cleansing Filter Syndicate Co.* v. *Cuninghame* [1906] 2 Ch. 34.

CIVIL SUIT.

*Dulip Singh* for the plaintiff.

*A. K. J. D'Cruz* for the defendants.

**Hashim Yeop A. Sani J.:** Soon after the civil disorder in 1969 the Government introduced the New Economic Policy and one of its main objectives was to encourage the growth of Malay participation in commerce and industry. Since then it has been the declared policy of the Government to encourage existing and new companies and other business firms and organisations to open their doors to Malays or "Bumiputras" either as employees or as shareholders as circumstances may permit. Most business firms and companies have reacted to this call favourably. However it has also been known that there have been instances where such Malay participation or "Bumiputra participation" is only in form and not in substance *i.e.* in the form of lending of names by certain Bumiputras to business ventures. Business ventures of this kind have been contemptuously referred to by some as the "Ali Baba" system of business *i.e.* businesses which carry

Malay names but in actual fact still under the absolute control of non-Malays.

In respect of transport companies it would appear the Government started to encourage Bumiputra participation in 1971. In the State of Negri Sembilan this policy was reflected in the resolutions of the Seremban Town Service Sdn. Bhd. and the N.S. Passenger Transport Operators' Association during that year. These will be referred to subsequently in this judgment. The subject of this suit is the response of the Seremban Town Service Sdn. Berhad (of which the defendants are directors) to the Government policy. The company is carrying on transport business and is a member of the N.S. Passenger Transport Operators' Association.

The Seremban Town Service Ltd., (hereinafter referred to as "the company") was incorporated in 1947 under the Companies Ordinance, 1940. The first defendant, the second defendants and one Santok Singh s/o Suchait Singh were the promoters and first directors of this company. According to second defendant (DW1) the company began operations with only one bus in 1947 but due primarily to his devotion to the company the company has since expanded and at present has 27 buses running.

At the Annual General Meeting of the company held on 7th April, 1971 it was unanimously resolved to incorporate Malay participation in the company. This is seen in item VI(iv) of the Minutes of the Annual General Meeting of the Company at page 69 of Exhibit P2. This resolution was rescinded at another Annual General Meeting of the Company held on 29th November, 1972 which appears under item 5 at page 160 of Exhibit P2 as follows: —

"It is unanimously resolved that the resolution by the General Meeting dated 7th April, 1971 as set out in paragraph IX of the Minutes of the said meeting be and is hereby rescinded and that the Malay participation in the shareholding of the company be restricted to 30% of the issued and paid-up capital of the company at the time of entry of Malay shareholders, as approved by the Negri Sembilan Transport Operators' Association."

Subsequent to this a number of meetings of the directors of the company were held at which meetings the topic of Malay participation in the company was hotly debated. There seems to be divergent views expressed on the topic, primarily between the first defendant and the rest of the directors of the company. At the directors' meeting held on 7th April, 1973 the second defendant reported to the Board of Directors that a number of Malays had agreed to purchase shares of the company. The names of those persons appear at page 199 of Exhibit P2. At another meeting of the Board of Directors of the company held on 12th May, 1973 a new list was submitted by second defendant in respect of the shares to be allotted which amounted to 31,500 shares. These shares are from the unissued shares of the company — Page 210 of Exhibit P2.

The N.S. Passenger Transport Operators' Association had earlier on accepted the Government policy and had resolved that member companies (including the company) allocate 30% of their shares at par to the Negri Sembilan State Development Corporation. This resolution of the Association was known to the Board of Directors of the company and was so recorded in the Minutes of their meeting held on 24th March, 1973 — Page 179 of Exhibit P2.

The plaintiff, a shareholder in the company, wrote on 5th May, 1973 to the Secretary of the company asking whether it was true that the Board of Directors had issued shares to members of the public — Page (11) in Bundle of Pleadings. After what seems to be an evasive reply dated 7th May, 1973 (Page 12 in Bundle of Pleadings) the Secretary replied in a letter to the plaintiff dated 14th May, 1973 that "the directors of Seremban Town Service Sdn. Berhad had resolved to issue 31,500 shares at par to members of the public" — Page 13 in Bundle of Pleadings. In the meantime the plaintiff had applied for and was granted an interim injunction to restrain the defendants whether by themselves or by their servants or agents or otherwise howsoever from holding and/or conducting any Directors' meetings to approve issue convey dispose or transfer the unissued new shares of the company to any members of the public and from passing any resolutions to approve convey dispose issue or take such action or actions to grant and/or transfer the unissued new shares of the company to any members of the public. The injunction was still in force at the time of hearing of the main action.

Briefly, in the main action the plaintiff seeks for a declaration that the acts of the defendants to issue the unissued new shares of the company to the selected persons is void and *ultra vires* of the Memorandum and Articles of Association of the company. The plaintiff also seeks for an injunction to restrain the defendants from holding or conducting any directors' meeting to approve issue convey dispose or transfer the unissued new shares of the company to any members of the public and to offer such shares first to the plaintiff and other existing shareholders of the company and upon default of acceptance to be offered to the Negri Sembilan State Development Corporation.

At the commencement of the hearing the plaintiff withdrew the action against the first defendant. The defence of the second, third and fourth defendants states that the action of the directors in question was in accordance with the Articles of Association of the company and in compliance with the new economic policy. They also contend that there has been no issue of shares to the public and if there was any issue it was only to the employees of the company.

In the main action hearing was protracted because the plaintiff sought also to show that —

(a) the second defendant has throughout his tenure of office as director of the company never really been interested in the welfare of the company but only his own;

(b) there was evidence of bad faith in the decision of the Board of Directors; and

(c) the persons described in the list submitted by the second defendant to the Board of Directors were low level employees of the company and therefore men of straw and as such not in a position to pay for the shares and consequently the venture of the company to allow Bumiputra participation in this case was just another "Ali Baba" system.

To show that the decision of the Board of Directors (to issue the unissued shares to those persons) was merely a sham transaction for the purpose only of

appearing to implement the Government policy in name only but not in substance the plaintiff brought PW5 (an employee of the company) who testified that the money to purchase the shares would be provided by the company and the control of the company shall remain in the existing shareholders. PW5 said further that because he did not play to the tune of the second defendant he was demoted from the post of ticket inspector to an ordinary bus driver retaining the same salary. To this the defence replied in the testimony of third defendant (who is the son of the second defendant) that PW5 was in fact demoted because of inefficiency. The defence also brought DW3 (one of the persons in the list submitted by the second defendant) who testified that he could afford to buy shares to be allotted to him and if the other employees in the list were not able to buy those shares he would himself raise the necessary sum required for the purpose.

It is set out in *Wallace & Young* Australian Company Law & Practice at page 393 that the rules governing the conduct of a director are *inter alia* as follows: —

"(1) He must act honestly and exercise that degree of skill and diligence that would amount to the reasonable care which an ordinary man might be expected to take in the circumstances on his own behalf.

(2) He must act *bona fide* in what he believes to be — not what a court may consider — in the interests of the company. *Re Smith & Fawcett* [1942] Ch., at p. 306.

(3) He must not exercise his powers for a purpose other than that for which they were conferred. *Mills* v. *Mills* (1938) 60 C.L.R. 150.

(4) He must not place himself in a position where his interest and his duty conflict."

At the conclusion of the trial I found that most of the lengthy evidence adduced was in fact unnecessary. In order to succeed, all that the plaintiff need show is that decision of the Board of Directors at the meeting of 7th April, 1973 and their acts in subsequent meetings to allot 31,500 unissued shares to the Malay employees of the company was in contravention of the resolution of the Annual General Meeting of the company held on 29th November, 1972 having regard to the provisions of Articles 1, 6, 40 and 46 of the Articles of Association of the company (Exhibit P1). This view is based on the following reasoning.

Article 1(c) of Articles of Association of the company provides that any invitation to the public to subscribe for any shares or debentures or debenture stock of the company is prohibited. The relevant provisions in the Articles relating to disposal of shares of the company are provided in Articles 6, 40 and 46. Article 40 relates to registration of transfers and suspension of registration prior to Annual General Meeting of the company. Relevant to the determination of the issue in this action are provisions of Article 6 and 46 which for ease of reference are reproduced below: —

Allotment of shares

"Article 6. The shares taken by the subscribers to the Memorandum of Association shall be duly issued by the Directors. Subject as aforesaid the shares shall be under the control of the Directors who may allot and issue the same (subject always to Articles 1, 40 and 46 hereof) to such persons on such terms and conditions and at such times as the Directors think fit and with full power to give to any person the call of any shares either at par or at a premium, and for such time and for such consideration as the Directors think fit."

Unissued original and new shares to be offered to members in proportion to their holdings

"Article 46. Unless otherwise determined by the Directors or by the resolution authorising an increase of capital any original shares for the time being unissued and any new shares from time to time to be created, shall before they are issued, be offered to the members in proportion as nearly as may be to the number of shares held by them. Such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer if not accepted will be deemed to be declined, and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the Directors may, subject to the provisions of these presents dispose of the same in any manner which they think beneficial to the Company. The Directors may in like manner dispose of any such new or original shares as aforesaid which, by reason of the ratio borne by them to the number of persons entitled to such offer as aforesaid or by reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered in manner hereinbefore provided."

The issue in this action can therefore be resolved by answering the following questions: —

(1) Were the acts of the Directors as reflected in the minutes of the meeting of the Board of Directors held on 7th April, 1973 and the subsequent meetings on the face of those Articles permissible; and

(2) If such acts are on the face of those Articles permissible whether there is evidence of bad faith?

If the answer to question (1) above is in the negative it would be unnecessary to go into question (2).

The Articles of Association of a company is the constitution of the company. Therefore the acts of the Directors must be tested against the provisions of articles of the company. To enable the company's activities to be carried out in an orderly manner the provisions of Articles of Association must be followed. First, were the acts of the Directors in contravention of Article 1(c) in that the transaction constituted an invitation to the public to subscribe for the shares of the company which is prohibited under that Article? In my view it was not, on the authority of *Rattan Singh and Others, Petitioners* v. *Managing Director of the Moga Transport Company*[1] as the persons to whom it was decided to allot the shares of 31,500 are selected persons they cannot be said to be the "public" within the meaning of that Article. The transaction in question does not in my view amount to an offer which was to open to anyone to bring his money and apply for the shares

Having disposed of Article 1(c), the question left to be considered is the construction of Articles 6 and 46 referred to above. Article 6 confers control over the shares of the company to the Directors who may allot and issue the same (*subject always to articles 1, 40 and 46*) to such persons on such terms and conditions and at such times as the Directors think fit. The overriding consideration in the exercise of this control is contained in the provisions of those Articles men-

tioned. But Article 40 relates only to registration and suspension. Therefore the only question to be decided is whether or not the transaction is in contravention of Article 46. According to Article 46 any original shares for the time being unissued and any new shares from time to time to be created, shall before they are issued, be offered to the members in proportion as nearly as may be to the number of shares already held by them. However that Article begins with the words "Unless otherwise determined by the Directors or by the resolution authorising an increase of capital..." In this case a resolution was passed by the Annual General Meeting of the company on 29th November, 1972 authorising the company to accept Malay participation in the shareholding but restricted to 30% of the issued and paid-up capital at the time of entry of Malay shareholders *and that these Malay shareholders shall be those as may be approved by the N.S. Passenger Transport Operators' Association.* In my view the decision of the Directors on 7th April, 1973 and expressed subsequently has to be examined in the light of this resolution.

In the interpretation of the constitution of a company *Gower* in Modern Company Law 3rd Edn. page 21 said that —

"Though they will strive to adopt a construction which gives 'business efficacy' to the company's regulations, they are bound by the strict letter of the words used and, if these words are unambiguous, an argument that they produce inconvenience, or even absurdity, will only be applied with great caution. The result is to produce even greater strictness than in normal cases of contract, for the written regulations cannot be rectified even if they are not in accordance with the parties' intention."

In the interpretation of the constitution of the company, an analogy may be found in constitutional law and the learned author says this on page 17 (*supra*): —

"In a parliamentary democracy such as ours, legislative sovereignty rests with Parliament, while administration is left to the executive government, subject to a measure of control by Parliament through its power to force a change of government. It is much the same with a company, except, of course, that a company is not sovereign but has a limited competence only. Within these limits, supreme rule-making authority rests with a general meeting of the members."

On the division of powers between the company in general meeting and the Board of Directors, the Court of Appeal, in *Automatic Self-Cleansing Filter Syndicate Co.* v. *Cuninghame*[2] made it clear that the division of powers between the board and the company in general meeting depended in the case of registered companies entirely on the construction of the articles of association and that where powers had been vested in the board the general meeting could not interfere with their exercise. The relevant article in that case provided that the management of the company should be vested in the directors who might exercise all powers of the company which were not by the statutes or the articles expressly required to be exercised by the company in general meeting — see also *Gower's* Modern Company Law at page 130.

Let us look at our own case. Both the Directors and members in general meeting are primary organs of the company between whom the company's powers are divided. In the disposal of shares this division is clearly set out in Article 46 of the constitution of the company where either the Directors *or* members in general meeting by resolution may determine how any original unissued shares or any new shares may be allotted. Article 46 specifies that there is residual power of allotment in the members in general meeting of a company. In *Hahlo's* Casebook on Company Law at page 231 the following is said about the allotment of shares: —

"Allotment is the appropriation of shares to a person by the company. Usually allotment is entrusted by the articles to the board of directors, who must act in the best interests of the company and cannot delegate this power: *Howard's* Case — (1866) L.R. 1 Ch. App. 561. In *Bamford* v. *Bamford* — [1968] 3 W.L.R. 317 — it was held that the members in general meeting have residual powers of allotment and that, unlike the directors, who are always subject to the fiduciary duty to act in the best interests of the company, they may exercise these powers in their own interests...."

In my view, by virtue of Article 46 once the members in general meeting of the company resolve on the manner of allotment it will not be open to the Directors to act contrary to the resolution subsequently. To construe Article 46 otherwise would be tantamount to encouraging conflicting control of activities of the two primary organs of the company. It is my view therefore that the acts of the Directors on the proposed allotment of the 31,500 shares of the company reflected in the minutes of Directors' Meeting on 7th April, 1973 and in the subsequent meetings were against the resolution of the Annual General Meeting of 29th November, 1972, as the persons to whom it was proposed to allot shares were not persons approved by the N.S. Passenger Transport Operators' Association. It follows that the decision of the Directors is in contravention of Article 46 and is therefore *ultra vires.* The answer to my question (1) is thus in the negative and I therefore need not go any further into whether or not there was bad faith on the part of the defendants.

The final question is: What is then the relief appropriate for the plaintiff. In his pleadings the plaintiff has asked for a declaration that the acts of the Directors were *ultra vires* the Memorandum and Articles of Association and has also asked that the defendants as Directors of the company be ordered to offer the unissued new shares to the existing shareholders of whom the plaintiff is one and upon default of acceptance to offer them to the Negri Sembilan State Development Corporation. The State Development Corporation is mentioned because it was decided at the N.S. Passenger Transport Operators' Association meeting of which the company is a member that the State Development Corporation can be treated as the persons approved by the Association for the purpose of allotment of shares.

Counsel for defendants has urged that the court should invoke section 63 of the Companies Act, 1965 for the purpose of validating the issue relating to any allotment of shares in question According to section 63 of that Act where a company purports to allot shares and the allotment of those shares was invalid by reason of any provision of the memorandum or articles of the company, the court may upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and

equitable so to do make an order validating the allotment. I fail to see the relevance of this provision in this case since no allotment has been made only a decision to allot and furthermore, the plaintiff although a shareholder, is not one of those persons referred to in that section.

After considering the circumstances of this case, and upon finding that the acts of the Directors in question are *ultra vires* the Articles of Association of the company, I propose to grant an injunction to restrain the defendants, but only for so long as the resolution of the Annual General Meeting of the Company held on 29th November, 1972 remains in force, from holding and/or conducting any Directors' meetings to approve issue convey dispose or transfer the unissued new shares of the company otherwise than to persons described in that resolution.

Costs to the plaintiff.

*Order accordingly.*

Solicitors: *Dulip Singh & Co.; A. K. J. D'Cruz & Co.*

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## EASTERN MINING & METALS CO. SDN. BHD. v. WAN ABSAH BINTI MOHAMED & ORS.

**[A.C.J. (Ibrahim J.) June 25, 1974]**
**[Kuala Trengganu — Civil Appeal No. 1 of 1972]**

*Workmen's Compensation — Whether deceased's death due to accident which arose out of and in the course of employment — Workmen's Compensation Ordinance, 1952, s. 4(1)(b).*

In this case the deceased was employed by the appellants as a rocker operator. He died of a heart attack after he had travelled to the work site on the day in question. The arbitrator decided that the deceased's death was due to an accident which arose out of and in the course of his employment and awarded to the respondents a sum of $7,200 as compensation. The appellants appealed.

**Held,** dismissing the appeal: the learned arbitrator had rightly decided that the deceased's death was due to an accident which arose out of and in the course of his employment.

*Cases referred to:-*

(1) *McFarlane* v. *Hutton Bros. (Stevedores) Ltd.* [1926] All E.R. Rep. 246.

(2) *James Patrick & Co. Proprietary Ltd.* v. *Sharpe* [1954] 3 All E.R. 216.

CIVIL APPEAL.

*K. Thayalan* for the appellants.

*A. Wilson* for the respondents.

**Ibrahim J.:** This is an appeal on a certificate under section 39(2) of the Workmen's Compensation Ordinance, 1952 (hereinafter referred to as the Ordinance) from the decision of the President Sessions Court, Dungun sitting as an arbitrator under section 30 of the Ordinance.

The facts are not in dispute. One Long bin Haji Mohamed was first employed by the appellant company in 1954 as a rocker operator. The rocker was about 35 tons in weight and was used to shift iron ore and waste to the required places. The nature of the work was 'rough & tough'. On 14 September 1969 he left his house at Sura, Dungun to go to work in Bukit Besi. His shift that day was from 4 p.m. to 12 midnight. He boarded the company train which left Sura station at about 1.30 p.m. and arrived at Bukit Besi station at about 3.15 p.m. He appeared normal and did not complain of any illness during the train journey, the distance of which was about 23 miles. From Bukit Besi station he walked along level ground to the bus station about 100 yards away and after collecting his time card at about 3.45 p.m. he boarded a bus to go to his work site which was about one mile from the bus stand. The bus journey was an uphill climb with lots of zig zag turnings. He reached his work site at about 4 p.m. and after alighting from the bus he went to the 'makan' shed which was also used as a resting place. At about 4.05 p.m. he complained that he was not feeling well and asked that he be taken to the hospital. A Land Rover took him to the company hospital where he was admitted at about 4.30 p.m. for observation and treatment of his complaint of severe chest pain. He died at about 3.10 a.m. on the following day of Myocardial Infraction (*i.e.* heart attack) which the company doctor (RW1) said was an ordinary illness. He was about 50 years old at the time of his death.

The deceased's widow and 6 children (respondents) subsequently made an application to the Pen. Pengarah Hal Ehwal Buruh, Dungun for compensation under the Ordinance. At an enquiry held by the Commissioner the parties only agreed that the deceased was a workman within the meaning of the Ordinance and that the respondents were his dependants. The disputed matters were therefore referred to the arbitrator who in the event decided that deceased's death was due to an accident which arose out of and in the course of his employment and awarded to the respondents a sum of $7,200 as compensation.

It is contended by the appellant company that the learned arbitrator had erred in law —

(1) in holding that the circumstances and evidence adduced before him amounted to an "accident" within the Ordinance

and

(2) in failing to give sufficient consideration to the facts that the cause of death of the deceased was Myocardial Infraction (*i.e.* heart attack) and that on the material day the deceased had not commenced his work.

Though the company doctor had said that the cause of death was an ordinary illness and that his old age, diabetes and blood pressure had contributed to it, he also said that the "nature of the work of the deceased as a rocker operator for the past 15 years and 6 days was the contributory cause of the hastening of his heart attack" and I therefore agree with the learned arbitrator's finding that "the deceased's death was due to an accident within the meaning and in the context of the Workmen's Compensation Ordinance, even though it was not attributable to any sudden strain having been put on the deceased on the day in question." In *McFarlane* v. *Hutton Bros. (Stevedores) Ltd.*[1] where it was held that the death could be due to an accident within the meaning of the Workmen's Compensation Act, 1925, section 1, even though it was not attributable to any sudden, unusual strain having been put on the workman Atkin L.J. at page 251 said: